SWAMI RAMANAND TIRTH MARATHWADA UNIVERSITY

NANDED

SYNOPSIS

ON THE PROPOSED RESEARCH TPOIC FOR Ph.D IN LAW

THE CRITICAL STUDY OF THE CONCEPT OF JURIST FOR THE PURPOSE OF APPOINTING THEM AS JUDGES OF THE CONSTITUTIONAL COURTS AND ITS IMPACT ON INDIAN JUSTICE AND LEGAL EDUCATIONAL SYSTEM WITH SPECIAL REFERENCE TO LAW TEACHERS

UNDER THE GUIDENCE OF

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Introduction:

Traditionally and generally the Justice system of any State means and includes the Judges and the Advocates. Litigants brought their cases before the Judges (Courts) through the Advocates, an enrolled members of Bar councils of different States and only through that Advocates a litigants can put forward his case before the Judges. However, two exceptions are provided by the law. First, a litigant can himself represent his case before any Court including High Court and Supreme Court, which is known as party-in-person and second, if the litigation involved a social issue, anyone can represent. However, administrative law, a fastest growing branch of law, has no objection in appointing a person as a Chairperson or members of their Quasi Judicial bodies with no law degree as necessary qualification and at the same time permitting non advocates also to appear and represent the cases of others. Registrar of Co-operative society, Income Tax Commissioner or Chartered Accountants or Tax Consultants is few examples.

There are many ways by which the law professor can contribute their part in Justice System. The role of law professors shall not be restricted to teaching field only, but their brain can be used and utilized for achieving many objects in justice system.

It is admitted fact that the law teachers are completely kept away from playing any role in Indian justice system. The law teachers are very familiar with the legal knowledge, their understanding of not only legal concept and legal procedure is good but they are very well in jurisprudence also. Law teachers teach law to the law students as part of their duty and make society aware of different laws through free advice as a part of their social responsibility. But still the law teachers are having zero scope and role in justice system. The brains of law teachers are very useful for justice system in India. They could be used by different and various way.

But in this entire justice system, the backbone of legal profession, i.e. law professors are nowhere to play any role. They are kept away from contributing any role and their part in justice system in India. Where the law professors are lacking in law? Don't they understand the law? Don't they understand the legal procedure? Don't they know how to interpret the laws? Aren't they entitled to shoulder the responsibility of justice system? How could they give justice to their teaching job and participate in justice system? If they permitted to be a part of justice system, will it affect their teaching skill or on the contrary it will improve their teaching efficiency? What about the other administrative work which the law professor supposed to do? Whether law professors accept this responsibility? And what would be the impact on justice system and legal education if law professor allowed to be the part of justice system? Considering this aspect, these few questions are put forward for the answers through this proposed research work.

The research work would also undertake a comparative study of role of law professors in justice system, with special reference to USA and Canada. Researcher will try to find out positive and negative aspects of the study topic and its impact on society, justice system and legal education.

The research would critically examine the various aspects of the study, its positive and negative impact and thereby make every attempt to find out the answers of proposed hypothesis in this research work.

Review of Literature:

The research would follow the literature on the Constitution of India, especially B. Shiva Rao's, 'The framing of India's Constitution, Constituent Assembly Debate (CAD) and other well known commentaries on Constitutional work such as H.M. Seervai's Constitutional Law of India, M.P. Jain's, 'Indian Constitutional Law and Durgadas Basu's 'Shorter Constitution of India', to understand the correct approach of the Constitution maker on the concept '*jurist'*.

Apart from this, the researcher would also refer different books on the topic such as The Indian Advocates Act, 1961 and The Legal Services Authorities Act, 1987 and different law journals, News paper article, Magazines, Biography of eminent law thinkers and judges. The research will also make the foreign countries Constitution and related rulings and article of the study subject.

Significance of Research:

The country like Canada, appoint the law professor as their judges of apex courts and they have no complaint on the credibility and efficiency on their judgeship? The Constitution of India has already made a provision of appointing a non lawyer as a judge of Supreme Court, to whom we refer as *jurist.* So far how many *jurists* have been appointed as Supreme Court Judges? Whether the law professors can be come in the category of *jurists*? What would be the impact of any lawful provision of appointing law professors as judges on justice system as well as legal education? Will it help judiciary and justice system or it will spoil the entire game? Whether institutions where counseling is inalienable part of litigation lies any scope for law teachers, if yes, by what way? Arbitration, Lok Adalat, legal advisor to the police station in preparing the chargsheet or investigation any crime, pre and post litigation counseling, helping the public prosecutor or government pleader or helping the court in resolving any legal issues as *amicus curiae* etc. are different ways how law teacher can do the best to justice system. Such statutory and factual questions would be viewed and reviewed critically by the researcher in this research work.

Area of Research:

The study would evaluate an impact on society, justice system and legal education if the law teachers permitted to participate in justice system of India. It would also provide the comparative study of the topic with other countries namely USA and Canada.

The idea of allowing participating law teacher in justice system is not universally approved, there may be some objection to this idea, such as;

1. This is not practically possible.
2. Law teachers will try to make money out of this opportunity
3. This will affect their teaching efficiency

But at the same time this idea may be affirmatively argued in the following sense;

1. This will improve their efficiency as a law teachers
2. This help State to have readymade law experts to whose brain they can use for dispute resolution system and in a way justice system
3. Law teachers can be proved good counsellor, Arbitrator, legal advisor to the various public institution of the State.

In such negative and affirmative opinions, research will only put the correct approach. The research will also help to understand whether such participation of law teachers is practically possible and workable without affecting their profession?

Objective of the study:

The demand that law teachers shall be permitted to practice the law is old one. But the object of this research is little bit different. The research will make us understand that the brains of law teachers shall be respected and use for the betterment of justice system. Hence the following object this research will try to achieve;

1. To study the present and traditional role of law teachers and its impact on society, justice system and legal education.
2. To study how the law teacher can be the better associate of State in helping the poor and needy people of the society.
3. To study the impact if Law teachers appointed as legal advisor of different institution of States.

4. To study whether law teachers can be appointed as Supreme Court Judge as capacity of *jurist.*

5. To study how the society, Judiciary and academician reacts if law teacher actually allow participating in Justice System of India.

6. To find out the impact of such opportunity on the justice system and Bar Council, Judiciary and legal education (Law and facts)

Hypothesis:

1. Permission to law teachers in participating justice system has positive impact on Indian Justice System.

2. Permission to law teachers in participating justice system has fruitful to society, justice system as well as legal education.

3. Permission to law teachers in participating justice system has already laid down in the Constitution of India.

4. Law teachers are very qualified to be appointed as apex court judge in capacity of *jurist* and therefore their appointment in lower and apex judiciary bring positive change in judiciary and in entire justice system.

5. Appointment of apex court judges from Bench, Bar and University lead bright future to the justice system and legal education.

Research Methodology:

The researcher would critically examine Article 124(3) of the Constitution of India to understand real scope and intention of the Constitution maker in inserting the concept *jurist* and at the same time the restriction put by the Advocate Act, 1961 on the law teacher to practice law before the courts. It also examines that how directly or indirectly the legal services authorities Act, 1987 permitted the law teacher to participate in justice system.

The researcher also need to interviews the eminent scholar and jurist on the topic of research and also make a questionnaires to get the actual opinion from bench, bar and law teachers. It will help to understand whether the law teachers are really interested in having another and crucial responsibility and also to understand whether bench and bar welcoming the move or they have their own reservations on the topic.

Hence the researcher would follow both Doctrinal and non Doctrinal method for the proposed research and it would also base upon some secondary and external source of data.

Scheme of Chapterisation:

Sr. No.	Name of the Chapter
1.	**Introduction**
2.	**The present and traditional role of the law teachers in and out of justice system of India**
3.	**How the law teachers can become jurist.**
4.	**How and what role law teacher can play in justice system**
5.	**Scope to law teachers in justice system: A comparative study**
6.	**Legal and social impact on Bench, Bar and Legal education**
7.	**Conclusion and suggestions.**

Chapter 1

Introduction

The Constitution of India has introduced a concept of *jurist* without defining it. Non defining the term has lessen the scope of those law expert who are not either Judge or advocates. Very rarely a law teacher recognized as jurist, Prof. Dr. Upendra Baxi, Prof. S.P. Sathe, Prof. Dr. Madhav Memon are some of the known faces from academicians who are recognized as *Jurist.* But unfortunately no *jurist* has so far been appointed as apex Court judge. Law teachers are very well familiar with law and procedure and hence they can be proved better judges.

Advocate Act, 1961, University Grant Commission (UGC), concern University and the rules of the State government made from time to time have restricted the scope of

Law teachers from participating the justice system. How it affects the justice system and at the same time how it benefit the legal education need detail discussion.

Some concepts need to be defined; such as *Justice System, Jurist, law teachers etc.*

The tale will begin from the introduction of the Constitution. Few examples from British India will also help the topic to be enlightened. Expectations of UGC, University, Bar Council and State Government from law teachers and their various rules, circular and guidelines will be critically examined.

Chapter 2

The present and traditional role of the law teachers in and out of justice system of India

The law teachers are not different than any other teacher. Their works are similar to other teachers. They are teachers of professional course like engineer and medical courses where the importance of practical shall be prime necessity. Still the law teachers are on all counts remain only teachers. Traditionally the role of law teachers was same as what they are having in present.

UGC described their qualification, University and State Government provide service rules and from time to time they need to comply with all kinds of guidelines issued by different authorities.

The Legal Services Authorities Act, 1987 shoulder some responsibility on law colleges and law teachers to make the people aware of different laws and to run legal aid centers in their campus.

The historical development in the role and work of law teacher elaborate the actual status of law teachers. This research work will bring out the present and traditional role of the law teachers in and out of justice system of India.

Chapter 3

How the law teachers can become jurist?

To be a law teacher UGC and the Government have different qualification. It is true that every law teacher cannot be a jurist just because he is a law teacher. There are many lawyers practices in High Court and Supreme Court but it does not mean that everyone is qualified to be a judge of the apex court, same way every law teacher cannot become jurist and hence we need to understand that how a law teacher can become jurist for the purpose of becoming judges of the Constitutional courts. This chapter will deals with this subject.

Chapter 4

How and what role law teacher can play in Justice System

This chapter will evaluate and discuss that how and what role the law teachers can play in the Indian Justice System. Possibilities to overcome the different restrictions, prohibitions need to be discussed. Basic object shall be use of brain of law teachers for the betterment and welfare of society at large is important. It is surprising that all these 65 years, successive government at the Centre have not used a very important provision of the Constitution and ignored a stream of persons though eligible to be judges of Supreme Court. Article 124 (3) of the Constitution deals with three kinds of eligible persons who can be appointed judges of the Supreme Court. Article 124(3), sub clause (a) & (b) says judges of High Court in service and practicing advocates can be elevated to the Bench of the apex court, and sub clause (c) says a distinguished jurist, in the opinion of the President, can be appointed as Judge.

The word, '*Jurist*' used in Article 124(3) of the Constitution of India is more important to this research. The provision of appointment a *jurist* is already made in the Constitution. A person can be appointed as Judge of Supreme Court and earlier to High Court even though he has no such law background and qualification. How many, so far been appointed as Judges of apex courts.

In the United States of America, judges of the Supreme Court come from all walks of life as Article III, Section 1 says nothing about the qualification of judges or mechanics of choice. A Supreme Court judge can be foreign born or wholly without legal experience or training. It is noteworthy that some of the greatest judges of the American Supreme Court had no judicial experience before they became judges. Judges like Marshall, Story, Taney, Hughes, Brandeis, and Frankfurter are some of them. (Rostrum's Law Review RLR Volume I Issue III, dated May 2014, Distinguished Jurist: A Tale of a Failed Constitutional Experiment. By-Rabindra Kr. Pathak)

Similar role law teachers in India if entrusted, experience will teach, whether inclusion of law teachers as judge of apex court is fruitful or not. But since the provision is made one should go for it at least for experiment.

Apart from this if a law teacher can be a judge, why not an associate and advisor to different institution of State, where State and its Institution need legal advice on different occasion. They can be amicus curie etc. Law teachers are caliber for these entire roles but yet to perform it.

Chapter 5

Scope to law teachers in justice system: A comparative study

This chapter will evaluate and distinguish scope to law teachers and their role in justice system with other countries namely USA Canada.

In USA and Canada the law teachers can claim judgeship. In fact, they are appointed as apex court judges. Recently two professors appointed as judges in Ontario in Canada. USA has appointed many as apex court judges though they had no law degree. Justice Samuel Miller who earned a medical degree and practiced medicine for more than a decade appointed as apex court judge in USA. Chief Justice Taft was Dean of Cincinnati Law School. There is rich tradition of appointing law professors and academicians as judges of the Supreme Court in the US.

What about India? What about eminent law professors in India? Do we have any precedent of appointment of law professors as apex court judge? Gadbois, Jr. stated that "No definition of "distinguished jurist" is offered, but the framers evidently intended such persons or eminent law professors who failed to meet one of the first two criteria laid down in Article 124 (3) of the Constitution of India.

Thus under this comparative study researcher will bring out positive and negative aspects of different countries practice of appointment of law professors as judge, its need in India and at the same time other part of law professor which they can perform in justice system.

Chapter 6

Legal and social impact on Bench, Bar and Legal education

This chapter is dedicated to analyses and studies the social and legal impact on such inclusion of law teachers in justice system on Bench, Bar and education. For the purpose of achieving correct analyses Researcher would collect the data from different source. Opinion of Bench, Bar and education is relevant for the research and hence interview and questionnaires will help the research.

How the Bench, Bar and Education react and whether this impact, positively or negatively brought the changes in justice system will be analyses at the conclusion stage of this research work.

Chapter 7

Conclusion and suggestions.

The conclusion and suggestions will be made at the completion of research findings.

This chapter will draw the conclusion on the basis of the above mentioned study and it would further try to provide workable suggestions to implement the inclusive justice system and overcome all loopholes of such system.

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